

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 59-72 are pending in the present application. No new matter is added.

By way of summary, the Official Action presents the following issues: Claims 59-62, 64-68 and 70-73 stand rejected under 35 U.S.C. § 102 as being unpatentable over Miura et al. (U.S. Patent Publication 2002/0028004); and Claims 63, 69 and 74 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miura in view of Murakami et al. (U.S. Patent 6,483,929, hereinafter Murakami).

REJECTIONS UNDER 35 U.S.C. § 102

The Official Action has rejected Claims 59-62, 64-68 and 70-73 under 35 U.S.C. § 102 as being unpatentable over Miura. The Official Action contends that Miura describes all of the Applicants' claimed features. Applicants respectfully traverse the rejection.

Applicants' Claim 59 recites, *inter alia*, a biometric pattern detecting device, including:

a light source unit configured to emit a light to be reflected or scattered in a part of body; and

a detecting unit configured to detect an image of the light reflected or scattered in the part of body by the light source unit and generate a biometric pattern using the detected image,

wherein the light source unit is set in a horizontal direction or a horizontally slanted direction with respect to the part of body and the detecting unit is set in a vertical direction or a vertical slanted direction with respect to the part of body. (Emphasis added.)

U.S. Patent 6,993,160 (Miura et al., herein "Miura") describes a device and apparatus for carrying out personal identification by receiving a finger image in a non-contact manner and extracting the vein pattern of the image from this finger image. Miura describes that a plurality of light sources (2) CCD cameras (4) are arranged opposite each other in a coaxial

form around the central axis of a finger (20).¹ Thus, Miura describes that a vein pattern is determined by passing light through a finger (20), using light sources and CCD cameras arranged opposite to one another. In the final action dated April 18, 2008, in the section entitled "Response to Arguments" it was noted that:

Applicant's arguments filed on January 8, 2008, in regards to **Claim 59**, have been fully considered but they are not persuasive. Applicant argues that Miura fails to teach "detecting an image of the light reflected or scattered in the part of the body by the light source". This argument is not considered persuasive since in Figure 5 and paragraph [0033], the CCD cameras pick up vein patterns from the finger. It is well known even to lay person that light needs to be reflected or scattered for image detecting. Furthermore, the Applicant admits in the arguments that the Miura reference "detects light that passes through the body part." It is well known that not all light passes through any object and therefore is inherently scattered or reflected. Therefore, the Applicant admits that the Miura reference meets the limitations of the claim.

The Applicant has pointed out that the current claims require that an image is detected based upon reflective or scattered light. As Miura operates to capture images based on light which is passed, it does not create an image based on reflected light. Moreover, the Office points out that "it is well known even to a lay person that light needs to be reflected or scattered..." In this regard, Applicant reminds the Office that the current rejection is advanced under 35 U.S.C. §102. By justifying such rejection based upon what is "well known" it appears as though the Office is justifying this §102 rejection based upon an obviousness analysis. Additionally, by asserting the certain features as "well known" the Office is clearly taking official notice without documentary evidence to support this conclusion in violation of MPEP §2144. To be clear, the Applicant's claims require a reflection or scattering of light **in a part of a body**. Certainly, it is not well known or capable of instant and unquestionable demonstration as to defy dispute that images must be taken by scattering the light within a body as claimed.

Furthermore, this section of the final action noted that:

¹ Miura, col. 4, lines 19-31.

In response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the features upon which Applicant relies (i.e., detector and light source are not substantially straight line relative to the position of the finger) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The above-noted comment by the Office is also clearly inaccurate. This comment seems to be directed to a statement made at page 7 of the previously submitted response. The language "substantially straight line relative to the position of the finger" was not made in reference to the Applicant's claims, but was made in describing the operation of the Miura device. Thus, Applicant was not arguing this feature relative to currently pending claims.

Accordingly, Applicant respectfully requests that the rejection of Claims 59-62, 64-68 and 70-73 under 35 U.S.C. §102 be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 63, 69 and 74 under 35 U.S.C. § 103 as being unpatentable over Miura and Murakami. The Official Action contends that Miura describes all of the Applicants' claimed features with the exception of a near-infrared light. However, the Official Action cites Murakami as describing this more detailed aspect of the Applicants' claimed advancements and states that it would have been obvious to one of ordinary skill in the art, at the time the advancements were made, to combine the cited references for arriving at the Applicants' claims. Applicants respectfully traverse the rejection.

As noted above, Miura does not describe all of the elements of the Applicants' claims for which it has been asserted. Likewise, as Murakami has not been asserted as describing these features and, in fact, does not, Applicants respectfully submit that a *prima facie* case of obviousness has not been presented.

Accordingly, Applicants respectfully request that the rejection of Claims 63, 69 and 74 under 35 U.S.C. §103 be withdrawn.


CONCLUSION

Should the Examiner continue to disagree with the above distinctions, Applicants respectfully request that the Examiner provide an explanation via Advisory Action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present application, including Claims 59-74 is patentably distinguished over the prior art, in condition for allowance and such action is respectfully requested at an early date.

Respectfully submitted,

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